

Message Text

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TO AMEMBASSY BONN

INFO AMCONSUL MUNICH

AMCONSUL FRANKFURT

AMCONSUL BREMEN

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AMCONSUL STUTTGART

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E.O. 11652:N/A

TAGS: EAIR, GW

SUBJECT: CIVAIR: SEABOARD MUNICH CARGO OPERATIONS

SUMMARY AND ACTION REQUESTED: MUNICH DISTRICT COURT HAS RECENTLY RENDERED DECISION AGAINST SEABOARD WORLD AIRLINES PROHIBITING IT AND OTHER AIRLINES FROM TRUCKING CARGO FROM MUNICH TO FRANKFURT AIRPORTS UNLESS AIRLINES PAY FEE TO DO SO. DECISION, WHICH IS PROBABLY COUNTER TO "FAIR AND EQUAL OPPORTUNITY" PROVISION OF US FRG CIVAIR BILATERAL, MAY ENCOURAGE AUTHORITIES ELSEWHERE TO IMPOSE SIMILAR RESTRICTIONS TO DISADVANTAGE OF US CARRIERS. EMBASSY IS REQUESTED TO COMMENT ON SITUATION AND ON POSSIBLE APPROACHES THAT CAN BE TAKEN TOWARD RESOLVING PRESENT AND POTENTIAL DIFFICULTIES MUNICH DECISION POSES US CARRIERS. END SUMMARY AND ACTION REQUESTED.

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1. SEABOARD WORLD AIRLINES' WASHINGTON ATTORNEYS TOLD US

THAT ON OCTOBER 22 MUNICH DISTRICT COURT I RENDERED DECISION AGAINST CARRIER PROHIBITING IT FROM TRUCKING CARGO THROUGH MUNICH AIRPORT FOR SHIPMENT BY AIR THROUGH ANOTHER AIRPORT. DECISION ALSO PROHIBITS SEABOARD'S USE OF ITS MUNICH AIRPORT OFFICE TO ARRANGE TRUCKING FROM AN OFF-AIRPORT POINT IN MUNICH AREA TO ANOTHER AIRPORT. ALTHOUGH DECISION ORIGINATES WITH MUNICH AIRPORT SUIT AGAINST SEABOARD IT WAS UNDERSTOOD FROM BEGINNING THAT ACTION WAS

TEST CASE AND DECISION WOULD AFFECT ALL CARRIERS. AIRPORT AUTHORITIES HAVE IN FACT ANNOUNCED THAT EFFECTIVE OCTOBER 30 TRUCKING PROHIBITION IS APPLICABLE TO ALL AIRLINES AND FREIGHT FORWARDERS WITH FACILITIES AT AIRPORT.

2. AIRPORT IN SUIT ALLEGED THAT SEABOARD VIOLATED TERMS OF ITS LEASE FOR AIRPORT WAREHOUSE SPACE BY TRANSPORTING AIR FREIGHT FROM MUNICH AIRPORT TO OTHER GERMAN AIRPORT(S) IN TRUCKS AS PART OF OVERALL MOVEMENT EX MUNICH TO FOREIGN POINTS. AIRPORT ARGUED IN EFFECT THAT LEASE LIMITS LESSEE TO COMMERCIAL ACTIVITIES PERMITTED WITH CONSENT OF LESSOR. INASMUCH AS SURFACE TRANSPORTATION IN LIEU OF AIR TRANSPORTATION DEPRIVED LESSOR OF REVENUES FROM LANDING AND HANDLING CHARGES, LESSOR WITHHELD CONSENT FOR SEABOARD TO TRUCK FREIGHT TO OTHER GERMAN AIRPORTS. AIRPORT AGREED HOWEVER TO PERMIT TRUCKING IF CARRIERS PAID COMPENSATION OF DM 150 PER PALLET OR DM 300 PER TRUCK LOAD OF CARGO.

3. SEABOARD POSITION, AND PRESUMABLY THAT OF AIR CARRIERS ASSOCIATION (BARIG) WHICH PROVIDED SEABOARD FINANCIAL AND LEGAL SUPPORT, IS THAT TRUCKING IN LIEU OF AIR CARRIAGE IS EXPRESSLY PERMITTED THROUGHOUT CENTRAL EUROPE BY IATA RESOLUTION 507 B WHICH ENABLES CARRIERS TO INTEGRATE SURFACE AND AIR TRANSPORTATION FROM POINT OF ORIGIN SO LONG AS IATA RATE IS CHANGED FROM ORIGIN TO DESTINATION. UNDER IATA RESOLUTION 5126, HOWEVER, CARRIERS MUST RECEIVE SUCH SHIPMENTS AT THE AIRPORT NEAREST THE POINT OF SHIPMENT ORIGIN-NOT AT A DOWNTOWN TERMINAL OR OTHER OFF-AIRPORT STATION. THUS, CARRIERS CAN NOT SET UP OFF-AIRPORT FACILITIES AND STILL CHARGE IATA RATE.

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4. TRANSATLANTIC RATES FROM MUNICH AND FRANKFURT ARE VIRTUALLY IDENTICAL, AND CARRIERS TRUCKING FREIGHT TO FRANKFURT ABSORB THE ADDITIONAL EXPENSE. GIVEN LANDING FEES, CURFEWS AND LOW VOLUME OF OUTBOUND CARGO AT MUNICH CARRIERS ARE APPARENTLY WILLING TO DO THIS FOR ECONOMIC REASONS. ALTERNATIVE WITH WHICH CARRIERS NOW LEFT AS RESULT OF MUNICH DECISION, I.E., PROVIDE DIRECT AIR SERVICE TO MUNICH, PAY THE AIRPORT TRUCKING FEES IN

ADDITION TO OTHER TRUCKING EXPENSES OR UTILIZE LUFTHANSA
INTERNAL SERVICE OVER MUNICH/FRANKFURT SECTOR, ADD TO
COSTS-PERHAPS TO UNECONOMIC LEVELS-AND PUT CARRIERS AT
COMPETITIVE DISADVANTAGE WITH RESPECT TO LUFTHANSA.

5. SEABOARD HAS ASKED DEPARTMENT TO INTERVENE WITH
GERMAN AUTHORITIES TO EFFECT SOLUTION TO PROBLEM. IN
MEANTIME IT INTENDS (WITH BARIG SUPPORT) TO APPEAL MUNICH
DECISION AND TEMPORARILY PAY FEES. PANAM AND TWA,

ALTHOUGH NOT CODEFENDENTS IN SUIT, CONSOLIDATE SHIPMENTS
IN FRANKFURT FROM MUNICH AND OTHER GERMAN POINTS AND
SUPPORT POSITION THAT MUNICH RULING IMPOSES IMPROPER
LIMITATION ON FAIR AND EQUAL OPPORTUNITY OF US CARRIERS
TO OPERATE ROUTES SPECIFIED IN BILATERAL AGREEMENT.
CARRIERS ARE ALSO CONCERNED THAT SIMILAR RESTRICTIONS WILL
BE IMPOSED IN OTHER CITIES IN GERMANY, HOLLAND AND SWIT-
ZERLAND WHERE AUTHORITIES HAVE REPORTEDLY WATCHED
PROGRESS OF MUNICH CASE WITH GREAT INTEREST.

ACTION REQUESTED: IT IS OBVIOUS THAT MUNICH DECISION
PLACES OUR CARRIERS IN POSITION OF SERVING MUNICH
MARKET UNECONOMICALLY, IRREGULARLY (OR NOT AT ALL), OR OF
RELYING ON LUFTHANSA WHICH REPORTEDLY WILL NOT
GUARANTEE SPACE FOR CARGO ON ITS INTERNAL SERVICES THAT
IT DOES NOT CARRY INTERNATIONALLY. WHILE IT WOULD APPEAR
TRUCKING PROHIBITION CONTRAVENES "FAIR AND EQUAL OPPOR-
TUNITY" PROVISION OF US-FRG CIVIL BILATERAL, PROHIBITION
IS PROBABLY APPLICABLE TO LUFTHANSA AS WELL AS TO FOREIGN
AIRLINES THUS MATERIALLY WEAKENING ANY POSSIBLE ARGUMENT
THAT DECISION IS DISCRIMINATORY. WOULD APPRECIATE EMBAS-
SY'S COMMENTS ON SITUATION (TO INCLUDE DETERMINATION OF
APPLICABILITY OF MUNICH DECISION TO LUFTHANSA) AND EM-
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BASSY'S RECOMMENDATIONS AS TO POSSIBLE APPROACHES THAT
CAN BE TAKEN TO RESOLVE DIFFICULTIES DECISION POSES TO
OUR CARRIERS. INGERSOLL

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